



Paper No. 8

JOHN S. PRATT, ESQ
KILPATRICK STOCKTON, LLP
1100 PEACHTREE STREET
SUITE 2800
ATLANTA GA 30309

COPY MAILED

JUN 24 2002

OFFICE OF PETITIONS

In re Application of
Cuckler, Schatzker, Gross, Johnston, Kelman, and McTighe
Application No. 09/920,432
Filed: August 1, 2001
Attorney Docket No. 10557/247605
For: Acetbular Ring Prosthesis With Reinforcement Member

:
:
:DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
:
:

This is a decision on the petition under 37 CFR 1.47(a), filed March 28, 2002 (certificate of mailing dated March 18, 2002.)

The petition under 37 CFR 1.47(a) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)." Failure to respond will result in abandonment of the application. Extensions of time are available and will be governed by 37 CFR 1.136(a).

The instant petition was filed in response in to the "Notice to File Missing Parts of Nonprovisional Application" (the "Notice"), mailed September 17, 2001, which indicated that proper oath or declarations for the named inventors had not been filed, that a surcharge of \$130.00 was due consequently, and a certificate under 37 CFR 3.73(b) was necessary. The Notice set forth an extendable period for reply of two months from its mailing date. On March 28, 2002 (certificate of mailing dated March 18, 2002), in response to the Notice, petitioner filed a request for an extension of time within the fourth month, the instant petition, declarations for all named inventors except inventor Cuckler, and other documents evidencing inventor Cuckler's purported refusal to join the above-cited application.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and,

- (4) a statement of the last known address of the non-signing inventor.

The instant petition lacks item (2) above.

As to item (2) above, 37 CFR 1.175 and 37 CFR 1.63 require that an oath or declaration filed cite the mailing address for each named inventor. A review of the declarations filed revealed that inventor Schatzker's declaration does not provide a mailing address and only lists the residence as "Toronto, Canada." Before a petition under 37 CFR 1.47(a) can be considered grantable, a declaration for inventor Schatzker that complies with both 37 CFR 1.63 and 37 CFR 1.175 must be filed.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6919
Attn.: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, Virginia

Telephone inquiries should be directed to the undersigned at (703) 305-0010.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy